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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,276	09/27/2001	David J. Broyles	2078-00100	3428

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EXAMINER
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WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/965,276

Applicant(s)

BROYLES ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-73 is/are pending in the application.
- 4a) Of the above claim(s) 7-19, 26-33, and 43-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 20-25, 34-42 and 62-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of Group I in the paper filed 11/24/03 is acknowledged. The traversal is on the ground(s) that searching the two inventions will require little additional burden. This is not found persuasive because the two different inventions require different search strategies not only in what areas the inventions are searched but also in the context same are searched. For example, structure limitations regarding the apparatus claims are not considered and, therefore, searched in the same manner as they would be in considering the method claims.

The requirement is still deemed proper and is therefore made FINAL.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 20-25, 34-42, 65, and 68-73 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 4 and 65, it appears that -through- was misspelled as "though".

In claims 20, 34, and 68, it is not clear what is encompassed by "the uncracked pecans" in the last line of each claim. Which uncracked pecans are returns?

Substantially all that have been sorted out from the "largest width graduation"?

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20, 23, 25, 68 and 71, and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by Broyles (U.S. Patent No. 5879734).

Broyles discloses a process wherein a nut shelling plant is operated including the steps of cracking nuts (82), sizing the cracker product into a plurality of width graduations (i.e. various screens and slots), sorting uncracked nuts from a largest width graduation (i.e. slot 1) wherein the uncracked nuts that fall from the roller (34) are separated and sent back to the cracker (82) and wherein the remainder nuts are recycled back into the sizing portion of the process (i.e. starting with the level 1 screen).

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

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directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 6, 20-23, 25, 34, 38-40, 42, 62, 68-71, and 73 are rejected under 35 U.S.C. 102(e) as being anticipated by Broyles (U.S. Patent No. 6135020).

Broyles discloses a method of operating a pecan processing plant wherein there is a primary cracker product treated with a width separation device (any one of the screens or slots in Figure 7) and wherein said method also includes separating a secondary cracker product by weight into a light portion and a heavier portion (using the aspirator, see col. 11, lines 43-52) and wherein the heavier portion (that not removed by the aspirator) is eventually sent on to a width separation device (88). In addition, Broyles discloses sorting uncracked pecans from the largest width graduation (level 1 screen), submitting same through a set of double rubber coated rollers, and returning uncracked pecans to the cracker (82). Broyles also teaches a process (Figure 13) wherein a nut shelling plant is operated including the steps of cracking nuts (82), sizing the cracker product into a plurality of width graduations (i.e. various screens and slots), sorting uncracked nuts from a largest width graduation (148, i.e. double rollers) wherein the uncracked nuts are sorted therefrom (150, i.e. fourth slot) and sent back to the cracker (82). It should be noted that before the sorting step of uncracked nuts, large graduated nuts (from fourth screen and third slot) are submitted to a sheller (86).

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***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 35-37, 63-65, are rejected under 35 U.S.C. 103(a) as being obvious over Broyles (U.S. Patent No. 6135020) taken together with Croft.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned

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by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

The claims further call for the use of air and vacuum in transferring said pecan material and that same is transferred through conduits having a substantially circular cross-section. However, such concept of transferring via air and vacuum is shown, for example, in Croft which employs such a transfer operation in the processing of pecan material. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such concept in the transferring of pecan material in the process of Broyles (U.S. Patent No. 6135020) to provide a quicker, alternative way to facilitate movement of pecan material. In addition, circular conduits for transporting material (e.g. pipes) are notoriously well known, and it would have been further obvious to have incorporated same as a matter of preference depending on cost, availability, etc.

6. Claims 5, 66, and 67 are rejected under 35 U.S.C. 103(a) as being obvious over Broyles (U.S. Patent No. 6135020) taken together with Ramacher et al.

The claims further call for a specific type of air separation processing. However, such concept is well known in the art as taught, for example, by Ramacher et al which teaches separating nut material using air separation involving counter-current directing of light and heavy material. It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated same as a known air separation processing method.

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7. Claims 24, 41, and 72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record does not disclose nor teach the particular pin separating processing step as called for in conjunction with the pecan processing steps of the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.




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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier  
February 19, 2004

Anthony Weier  
Primary Examiner  
Art Unit 1761



2/19/04